

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:18-cv-00148-FL

BETTY EILEEN DONOVAN,)	
)	
Plaintiff)	
)	DEFENDANTS' MOTION TO
v.)	DISMISS FIRST AMENDED
)	COMPLAINT
)	
BRAGG MUTUAL FEDERAL CREDIT)	
UNION and JOHN SZOKA, individually,)	
)	
Defendants)	
)	

Now come Defendants Bragg Mutual Federal Credit Union (“Defendant Bragg Mutual”) and John Szoka (“Defendant Szoka”) (collectively, “Defendants”), by and through counsel of record, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7.1, hereby move to dismiss Plaintiff’s First Amended Complaint. In support of said motion, Defendants assert that Plaintiff’s claims against the Defendants fail as a matter of law for the following reasons outlined herein and as more fully set forth in Defendants’ Memorandum of Law in Support of their Motion to Dismiss Plaintiff’s Complaint:

(1) Plaintiff cannot maintain a claim for wrongful discharge in violation of public policy pursuant to N.C. Gen. Stat. § 143-422.2 based on allegations of retaliation as North Carolina does not have a public policy regarding retaliation for opposing discrimination and as Plaintiff has failed to state a claim for gender or age discrimination in the form of harassment because the conduct Plaintiff describes was neither sufficiently severe nor pervasive to create a hostile work environment.

(2) Plaintiff cannot maintain her claim against the Defendants as a whistleblower pursuant to 12 U.S.C. § 1790b as she has failed to establish a prima facie case under this federal anti-retaliation statute.

(3) Plaintiff cannot maintain her claim against Defendant Szoka for tortious interference with contract as she has failed to allege that she has a valid contract with a third person which confers upon the plaintiff a contractual right against a third person, that Defendant Szoka induced the third person not to perform the contract without justification, and that Defendant Szoka's actions resulted in actual damage to Plaintiff.

(4) Plaintiff cannot maintain her claim against the Defendants for civil conspiracy as the Complaint fails to allege any overt, tortious, or unlawful act which either Defendant committed in furtherance of the alleged conspiracy and this claim is further barred by the intracorporate conspiracy doctrine.

(5) Plaintiff cannot maintain her claim against the Defendants for punitive damages as she has not demonstrated that the Defendants have committed any wrongful act willfully or under circumstances of rudeness, oppression or in a manner which evidences a reckless and wanton disregard of Plaintiff's rights.

WHEREFORE, for the foregoing reasons, Defendants Bragg Mutual Federal Credit Union and John Szoka pray Plaintiff's First Amended Complaint be dismissed with prejudice.

This the 8th day of June, 2018.

/s/ Connie E. Carrigan

Connie E. Carrigan
N.C. State Bar No. 16583
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Case No. 5:18-cv-00148-FL

BETTY EILEEN DONOVAN,)	
)	
Plaintiff)	
)	
v.)	CERTIFICATE OF SERVICE
)	
BRAGG MUTUAL FEDERAL CREDIT)	
UNION and JOHN SZOKA, individually,)	
)	
Defendants)	
)	

I, Connie E. Carrigan, of Smith Debnam Narron Drake Saintsing & Myers, L.L.P., state under penalty of perjury:

That I am, and at all times hereinafter-mentioned was, more than eighteen (18) years of age; and

That on the 8th day of June, 2018, I electronically filed the foregoing Defendants' Motion to Dismiss Plaintiff's First Amended Complaint with the Clerk of Court and with Plaintiff's counsel via the CM/ECF system and served same upon the following by mailing a copy thereof, postage prepaid as follows:

Nicholas J. Sanservino, Jr.
Laura L. Noble
THE NOBLE LAW FIRM, PLLC
141 Providence Road, Suite 210
Chapel Hill, NC 27514
Attorneys for Plaintiff

This the 8th day of June, 2018.

/s/Connie E. Carrigan
Connie E. Carrigan